

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DAYTEN COLLEN WARREN
and FLETCHER ALEXANDER BLAKE EVANS,
Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

AMY JO WEIRICH,

Respondent-Appellant,

and

AARON BLAKE EVANS,

Respondent.

UNPUBLISHED
July 14, 2005

No. 260147
St. Joseph Circuit Court
Family Division
LC No. 03-000930-NA

In the Matter of FLETCHER ALEXANDER
BLAKE EVANS, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

AARON BLAKE EVANS,

Respondent-Appellant,

and

AMY JO WEIRICH,

Respondent.

No. 260585
St. Joseph Circuit Court
Family Division
LC No. 03-000930-NA

Before: Murphy, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court order terminating their parental rights to the minor children under MCL 712A.19b(3)(a)(ii), (g), and (j). We affirm.

The trial court did not clearly err in determining that the statutory grounds for termination of parental rights were established by clear and convincing evidence. MCR 3.977(J); MCL 712A.19b(3); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The trial court terminated respondent Aaron Evans' parental rights to his son, Fletcher, under MCL 712A.19b(3)(a)(ii). The evidence was clear and convincing that, during a period of more than 91 days prior to the termination hearing, respondent Evans was not proactive in pursuing custody of Fletcher or in initiating and maintaining a parent-child relationship with him. Fletcher was in the care of his grandparents for fifteen months while respondent Evans made no significant progress toward establishing a relationship with him or a proper home for him. Respondent Evans indicates in his appellate brief that he was unable to attend a meeting with a Georgia caseworker on August 31, 2004, regarding a home study; however, he gives no explanation or reasoning with respect to why he could not attend. The record reveals that he also failed to contact the worker thereafter. Furthermore, the record shows that respondent Evans failed to comply with earlier requests relative to a Georgia home study, the submission of references, and drug screens. In regard to the termination hearing in December 2004, respondent Evans states that he was unable to make the trip to Michigan from Georgia, yet offers no explanation whatsoever as to why he could not make the trip to attend the most important hearing in the proceedings. By respondent Evans' own account, as indicated in his brief, his last contacts, or attempted contacts, with Fletcher were in the spring and early summer of 2004. The trial court did not err in terminating the parental rights of respondent Evans pursuant to MCL 712.19b(3)(a)(ii).

The trial court terminated respondent Weirich's parental rights under MCL 712A.19b(3)(g) and (j). The evidence clearly showed that, when this proceeding commenced, respondent Weirich was not providing proper care or custody for the children, allowing them to parent themselves. Respondent Weirich argues on appeal that her sporadic incarcerations inhibited her progress during the course of the proceedings and that the evidence was not clear and convincing that she would be unable to provide proper care or custody within a reasonable time. Respondent Weirich was incarcerated for approximately 106 days out of the fifteen months of this proceeding, due primarily to her failure to attend her criminal trial and submit drug screens as a condition of probation.

The evidence showed that respondent Weirich was negatively influenced by others, suffered from depression, and tended to sabotage others' attempts to help her. She participated in services for three out of the fifteen months of this proceeding, and the evidence showed that she improved greatly when she relinquished bad relationships. However, the evidence also showed that, following her three months of progress, she re-associated with bad influences and violated her probation, resulting in incarceration. Subsection 19b(3)(g) does not require that there be a certainty that a respondent will be unable to provide proper care or custody within a reasonable time, but only that there be no reasonable expectation. Respondent Weirich's

incarcerations were the result of her own poor decisions. Given her continual poor decision-making, including violating her probation, failing to participate in services, and associating with negative influences, the trial court did not err in finding that there was no reasonable expectation that she would be able to properly parent the children within a reasonable time.

Likewise, the evidence showed that the children would suffer harm if returned to respondent Weirich. At the time of termination, she lacked employment and stable housing, had not participated in counseling to the extent that she learned to overcome self-defeating behavior, and had not remedied her tendency to associate with unsuitable men. Moreover, respondent Weirich's involvement with methamphetamines and the operation of a meth lab out of her trailer posed a dangerous environment for her children, and it reflected an inability to place the well-being of her children ahead of her own vices.

Respondent Evans also argues on appeal that the trial court erred in failing to state on the record the statutory ground for termination of his parental rights and in failing to make sufficient findings of fact and conclusions of law, as required by MCR 3.977(H). "Brief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(H)(1). The sufficiency of the trial court's findings must be reviewed in the context of the specific legal and factual issues raised by the parties and the evidence. *People v Rushlow*, 179 Mich App 172, 177; 445 NW2d 222 (1989), *aff'd* 437 Mich 149; 468 NW2d 487 (1991). Findings are sufficient if it appears that the trial court was aware of the factual issues in the case and correctly applied the law. *People v Armstrong*, 175 Mich App 181, 185; 437 NW2d 343 (1989); *De Voe v C A Hull, Inc*, 169 Mich App 569, 576; 426 NW2d 709 (1988).

It was clear that the trial court was aware throughout the proceedings that the legal issue was whether respondent Evans had pursued custody of Fletcher and thus whether subsection 19b(3)(a)(ii) applied to respondent Evans as alleged in the termination petition. The evidence also showed that the trial court was factually aware that two Interstate Compacts had been initiated to investigate respondent Evans' home and that he had ample opportunity to facilitate Fletcher's placement with him, but did not. The trial court's ruling concerning respondent Evans, though brief, referenced letters seeking compliance on the part of Evans in regard to placement, and the ruling referenced Evans' repeated failures to so comply. Additionally, when the court addressed the matter regarding the withdrawal of counsel, it commented, "So we're going to be able to establish the fact – the fact of *desertion*["] (Emphasis added). The entire record shows that the trial court was aware of the issue and correctly applied the law. Therefore, we find no error in the court's ruling.

Respondent Evans further argues that the trial court violated his constitutional right to representation by counsel when it allowed his attorney to withdraw at commencement of the termination hearing. Whether to allow counsel to withdraw is within the trial court's discretion, and this Court reviews the trial court's decision to grant an attorney's request to withdraw for an abuse of discretion. *In re Withdrawal of Attorney*, 234 Mich App 421, 431; 594 NW2d 514 (1999). An abuse of discretion is found only in extreme cases in which the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will or the exercise of bias. *Phillips v Jordan*, 241 Mich App 17, 29; 614 NW2d 183 (2000).

A parent in a termination proceeding has the right to retain an attorney and, if financially unable to retain counsel, has the right to "request and receive" a court-appointed attorney as a

matter of statute and court rule. MCL 712A.17c(4), (5), and (6); MCR 3.915(B). The constitutional concepts of due process and equal protection also grant respondents in termination proceedings the right to counsel. *In re Powers Minors*, 244 Mich App 111, 121; 624 NW2d 472 (2000). Therefore, respondent Evans was entitled to representation by counsel at the termination hearing, and an attorney was indeed appointed for that purpose. However, the court rule and statute charge a respondent with some responsibility, and the right to counsel may be waived or relinquished. *In re Hall*, 188 Mich App 217, 222; 469 NW2d 56 (1991).

In addressing this issue, a respondent's efforts to establish and maintain an attorney-client relationship are considered. If a respondent was informed of the right to counsel, the question becomes whether the respondent took advantage of this benefit to which he was entitled, or whether by relinquishing that known right the respondent waived the right to counsel. It is clear from the record that respondent Evans was provided notice of his right to counsel through the various summonses he received, and perhaps at the first hearing he attended, yet he never took an affirmative step to request or retain counsel to assist him in the important matter of termination of his parental rights. Moreover, respondent Evans acknowledges in his appellate brief that he was served with a copy of the termination petition and summons to appear at the termination hearing, and he acknowledges that the court appointed attorney Robertson on his behalf nearly two months before the hearing. However, respondent Evans, without explanation or effort to contact the court beforehand about any problems, did not attend the termination hearing and never contacted his appointed counsel in an effort to prepare a defense. Respondent's clear lack of desire to be represented by counsel, as well as to even pursue custody, indicated that he waived the right to counsel. The trial court did not abuse its discretion or violate his constitutional right to representation by counsel in allowing his attorney to withdraw.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Pat M. Donofrio